

## REMARKS/ARGUMENTS

The Office Action mailed December 10, 2008 has been considered. Reconsideration in view of the following remarks is respectfully requested.

Claims 1, 3, 5, 8, 11, 21, 23, 31, 33, 35, 36, 38, and 39 have been amended. Support for the amendment can be found throughout the specification, original claims, and figures. No new matter has been added.

Claim 2 has been cancelled without disclaimer or prejudice to the subject matter presented therein.

### The 35 U.S.C. § 102 Rejection

Claims 1-4, and 26 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Sevick-Muraca et al. (U.S. 5,865,754). This rejection is respectfully traversed.

According to the M.P.E.P. § 2131, a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.

Amended Claim 1 recites:

A method for obtaining a three-dimensional representation of a light source distribution located inside a mammal, the method comprising:

obtaining a topographical surface representation of the mammal; and

providing surface light image data from light emitted from a surface of the mammal originating from the light source distribution located inside the mammal; and

using a processing system, reconstructing a three-dimensional representation of the light source distribution internal to the mammal using the topographical surface representation and the surface light emission data.

The office action contends that Sevick-Muraca teaches “using a processing system (Fig. 1, 160), reconstructing a three-dimensional representation of the light source distribution internal to the sample based on the surface light emission data (col. 4, line 67 – col. 7, line 53)” and specifically points out Col. 7, lines 43-53, where “Sevick-Muraca states that the two-dimensional representation of the fluorescing tissue can be expanded to a three-dimensional representation”. Applicant respectfully disagrees.

Amended Claim 1 recites “obtaining a topographical surface representation of the mammal.” Each mammal has a different topography and thus a different three-dimensional topographical surface representation. On the other hand, Sevick-Muraca teaches the use of a reference having a constant surface, namely a circular tissue phantom (Col. 7, lines 49-50). A tissue phantom refers to a plastic imaging test device that remains the same for all tests. It is used for simplified testing, as in Sevick-Muraca. Thus, Sevick-Muraca does not obtain “a topographical surface representation of the mammal” as recited in Claim 1 since his surface stays the same for each image.

Amended Claim 1 also recites “using a processing system, reconstructing a three-dimensional representation of the light source distribution internal to the mammal using the topographical surface representation and the surface light emission data.” This is a custom representation of the internal light source distribution since no two mammals are the same. Each mammal has a different topography and image and thus a different three-dimensional representation. The claimed reconstruction also uses the topographical surface representation, which Sevick-Muraca does not teach or suggest. On the other hand, Sevick-Muraca teaches the use of a reference circle having a constant surface, namely a circular tissue phantom (Col. 7, lines 49-50). Thus, Sevick-Muraca does not teach “reconstructing a three-dimensional representation of the light source distribution internal to the mammal using the topographical surface representation and the surface light emission data” as recited in Claim 1.

Accordingly, since Sevick-Muraca does not teach each and every single element as recited in Claim 1, it can not be said to anticipate Claim 1. As to dependent claims 2-4 and 26, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable. It is respectfully requested that this rejection be withdrawn.

#### The 35 U.S.C. § 103 Rejections

a. Claims 5-10, 16-20, and 35-40 stand rejected under 35 U.S.C. § 103(a) as being obvious over Sevick-Muraca in view of Ntziachristos et al. (U.S. 6,615,063). This rejection is respectfully traversed.

b. Claims 11-15 and 21-25 stand rejected under 35 U.S.C. § 103(a) as being obvious over Sevick-Muraca in view of Ntziachristos and further in view of Bruder et al. (U.S. 7,263,157 B2). This rejection is respectfully traversed.

Claims 5-10, 16-20, and 35-40 depend from independent Claim 1. Thus, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable. It is respectfully requested that these rejections be withdrawn.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited and Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

It is believed that no fees are due in connection with the filing of this Amendment. However, if it is determined that any fees are due, the Commissioner is hereby authorized to charge such fees or any further fee required in connection with the filing of this Amendment is to Deposit Account 50-4481 (Order No. XENOP009).

Respectfully submitted,  
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